

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1504 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

CHANPURA GUNVANTBHAI HARGOVINDBHAI

Versus

BHARWAD VALABHAI RAIYYABHAI

Appearance:

MR SATYEN B RAWAL for Petitioner
MR JAYANT PATEL for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/10/2000

ORAL JUDGEMENT

The present petitioner-original plaintiff filed
Regular Civil Suit No.7/95 into the Court of learned
Civil Judge (J.D.), Vadhvan, for eviction of the suit
property on the ground of arrears of rent and subletting

by present respondent No.1-original defendant No.1 to defendant No.2 and according to the petitioner-original plaintiff, summons of the suit was served upon the defendant No.1 but he chosen not to appear into the Court either personally or through his advocate, and therefore, the Court below decided to proceed further ex-parte and accordingly an ex-parte order came to passed on 19-7-95 and at the end of trial, decree as prayed for came to be passed by the Court below in favour of the present petitioner-original plaintiff. Against the judgment and decree passed by the learned Civil Judge (J.D.), Vadhvan, in Regular Civil Suit No.7/95, present respondents-defendants preferred Regular Civil Appeal No.83 of 1995 into the District Court, Surendranagar, and by way of filing said appeal the defendants have challenged the judgment and decree passed by the learned Civil Judge (J.D.), Vadhvan, on various grounds, more particularly on the ground that the summons of the Court was not served upon them and, therefore, they could not remain present in the proceeding. After hearing learned counsel appearing for the respective parties, learned Extra Assistant Judge, Surendranagar, vide order dated 22nd July, 1999, allowed the said appeal and set aside the judgment and decree passed by the learned Civil Judge (J.D.), Vadhvan, in Regular Civil Suit No.7/95, dated 19-7-95 and remanded back the matter to the learned Civil Judge (J.D.), Vadhvan for deciding the same on merits with certain conditions. Against the judgment and order passed by the learned Extra Assistant Judge, Surendranagar, in Regular Civil Appeal No.83 of 1995, the petitioner-original plaintiff has filed this Civil Revision Application on various grounds.

2. I have heard Mr. S.B.Raval, learned advocate for the petitioner, Mr. Jayant Patel, learned advocate for the respondent No.1. Respondent No.2 is not present though served. I have also gone through the record and proceedings which have been called for and also the judgment and decree passed by the Courts below. Learned advocate for the respective parties have drawn my attention towards the record and proceedings of the trial Court. I have personally verified the same and it reflects from the record and proceedings of Regular Civil Suit No.7/95 that the day on which suit was filed, process was issued and it was made returnable on 10-2-95 and on that day the Court has passed the order and decided the matter ex-parte on the ground that though summons has been duly served and defendants have been called for, they have not remained present. On going through the record and proceeding more particularly the rojkam, it becomes clear that from 17-3-95 till the

ex-parte decree has been passed by the Court below i.e. July 1995, the advocates were remaining absent from the Court work. Even on the day of oral evidence i.e. on 22-6-95 as per the rojkam, advocates remained absent from the work as per the resolution passed by the bar, but advocate for the plaintiff was present along with plaintiff and looking to Exh.7, it reflects that oral evidence has been recorded by the Court below on the same day along with production of documents. It is established from Exh.7 that all exhibits which have been mentioned in the oral evidence have been written with red pen even in margin also. Over and above, it reflects from the record and proceedings that no proper procedure has been followed during the trial. The Court below should have taken reasonable care and caution while passing an ex-parte decree in such type of suit wherein the person may loose the valuable tenancy rights and the Court below should not show any hastiness and should provide reasonable opportunity to the concerned parties. Moreover, advocates have remained absent from Court work continuously for a period of 4 to 5 months and therefore, if somebody wants to appear in the Court through advocate, then also, one would not be in a position to appear and one would be certainly aware that advocates are on strike since last 4 to 5 months and court would not be working. In that circumstances, if somebody remained absent or not appeared either personally or through advocate, it was the prima-facie duty of the Court to reissue summons if at all he wants to proceed further in the matter during that period. On the other way, the advocate remained present along with the clients and if suitably they have obtained this type of decree, then in that case, this type of decree is required to be quashed and set aside at first instance.

3. In view of the aforesaid facts and circumstances of the case, I am of the opinion that no illegality has been committed by the lower appellate Court while passing the order in appeal whereby the lower appellate Court has set aside the ex-parte decree and remanded back the case. When the rights of the parties are kept open and the lower appellate Court has directed the court below not to prolong the trial and even the parties have acted accordingly and written statements have been filed by the opponents and issues were framed, this Civil Revision Application is required to be rejected.

3. As a result of the foregoing discussion, this Civil Revision Application is rejected. Rule discharged. The learned Civil Judge (J.D.), Vadhvan, is hereby directed to proceed further with the matter as per the

direction given by the learned Extra Assistant Judge,
Surendranagar in Regular Civil Appeal No.83 of 1995.

(R.P.Dholakia, J.)

*mithabhai